

BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2009-326-C

State Universal Service Support of Basic)
Local Service Included in a Bundled)
Service Offering or Contract Offering)

DIRECT TESTIMONY OF H. KEITH OLIVER

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 **A.** My name is H. Keith Oliver. My business address is 579 Stoney Landing Road,
4 Moncks Corner, South Carolina 29461.

5 **Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?**

6 **A.** I am employed by Home Telephone Company, Inc. as the Company's Senior
7 Vice President of Corporate Operations.

8 **Q. PLEASE BRIEFLY OUTLINE YOUR EDUCATION, TRAINING, AND**
9 **EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.**

10 **A.** I received a Bachelor of Science degree in Business Administration from the
11 College of Charleston in May 1977. After being licensed as a Certified Public
12 Accountant in May of 1979, I continued work in public accounting until October of
13 1984 when I was hired in the finance area at Home Telephone Company. In
14 December of 1999, I was named Vice President of Finance and in November

1 2004 promoted to Senior Vice President of Corporate Operations. In this
2 position, I am responsible for the development and execution of all regulatory and
3 legislative policy matters as well as all financial matters, including various
4 corporate support functions. I have previously served on several South Carolina
5 Telephone Association ("SCTA") committees, including having served as
6 Chairman of the SCTA Accounting Committee and Interconnect Committee.

7 I am also associated with several national organizations. I previously served as
8 chairman of the United States Telecom Association ("USTelecom"), Small
9 Company Caucus which at that time represented over 500 small member
10 companies of USTelecom. I also previously served on USTelecom's telecom
11 policy committee and their regulatory tactics committee. I am the immediate past
12 Chairman of the Board of Directors for the Organization for the Promotion and
13 Advancement of Small Telecommunications Companies ("OPASTCO").
14 OPASTCO is an international trade organization representing over 600 small
15 incumbent local exchange carriers serving primarily rural areas throughout the
16 United States and portions of Canada. I have appeared before this Commission
17 many times in the past to present testimony on behalf of the SCTA and the South
18 Carolina Telephone Coalition.

19 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING TODAY BEFORE THIS**
20 **COMMISSION?**

21 **A.** I am presenting testimony today on behalf of the South Carolina Telephone
22 Coalition ("SCTC"), whose member companies are listed in Exhibit A to my
23 testimony. Each member of the SCTC is a rural telephone company, as that

1 term is defined in the federal Telecommunications Act of 1996. We serve
2 predominantly rural areas of the State.

3 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY BEFORE THE**
4 **COMMISSION?**

5 **A.** The Commission requested that all parties state their position of as to whether
6 carriers of last resort ("COLRs") who provide basic local exchange service should
7 receive State Universal Service support when the basic local exchange service is
8 included in a bundled service or contract offering.

9 **Q. WHAT IS THE SCTC's POSITION IN THIS MATTER?**

10 **A.** The SCTC's position is that the Commission should reaffirm that COLRs should
11 receive State USF for all basic local exchange service lines they provide,
12 regardless of whether the basic local exchange service is provided on a stand-
13 alone basis or as part of a bundled service offering or contract offering. This is
14 consistent with the way the State USF and federal USF are currently
15 administered, furthers universal service policy, and is in the public interest.

16 **Q. WHY IS THIS ISSUE NOW BEFORE THE COMMISSION?**

17 **A.** Cable companies and competitive local exchange carriers ("CLECs") have
18 argued for years that COLRs either should not receive State USF or that their
19 State USF should be reduced if they provide other services along with the basic
20 local exchange telephone service. In fact, the current argument is similar to one
21 of the arguments that was made before the South Carolina Supreme Court in the
22 State USF appeal. In the Supreme Court appeal, some of the same parties that
23 are involved in this proceeding argued that the Commission, in approving cost

1 models and methodologies to size the State USF, failed to take into account the
2 costs and revenues associated with other services that use the local network.
3 The Supreme Court soundly rejected this argument, finding that the cost models
4 and methodologies approved by the Commission appropriately allocated the
5 costs of the network. The present issue before the Commission came up during
6 discussions of H. 3299, which was enacted by the General Assembly during the
7 last legislative session. That legislation allows electing carriers to essentially
8 become deregulated; however, carriers who elect to be deregulated under that
9 statute will be required to phase out State USF except with respect to stand-
10 alone residential basic local exchange telephone lines. To make sure this was
11 not interpreted to mean that State USF should be provided only for stand-alone
12 basic local exchange telephone service lines and not for bundled lines, the
13 General Assembly specifically provided:

14 [58-9-576(C)(11)] For those LECs that have not elected to operate
15 under this section, nothing contained in this section or any other
16 subsection shall affect the current administration of the state USF
17 nor does any provision thereof constitute a determination or
18 suggestion that only stand-alone basic residential lines should be
19 entitled to support from the state USF.
20

21 Following discussions in the context of debating H. 3299, Dukes Scott of
22 the Office of Regulatory Staff wrote a letter to the Commission explaining
23 that one of the compromises agreed upon by the various interested parties
24 and discussed with the Senate Judiciary subcommittee was the filing of a
25 request with the Commission for a hearing to address whether basic local
26 service should receive State Universal Service Support when it is included
27 in a bundled service offering or contract offering.

1
2 **Q. WHY IS IT UP TO THE COMMISSION TO MAKE DECISIONS CONCERNING**
3 **ISSUES RELATED TO DISBURSEMENTS OF THE STATE USF?**

4 **A.** The South Carolina General Assembly established the state Universal Service
5 Fund to work in conjunction with the federal Telecommunications Act of 1996. In
6 recognition of the Commission's expertise and experience in telecommunications
7 matters and to insure consistency in matters relating to universal service, the
8 General Assembly gave the Commission the jurisdiction to set the guidelines for
9 the South Carolina Universal Service Fund and to provide for the overall
10 management of the fund. The General Assembly has continued to give the
11 Commission jurisdiction in all State USF matters. For example, in the bundling
12 statute referenced above, the General Assembly expressly provided that carriers
13 providing bundled offerings and contract offerings were obligated to provide
14 contributions to the State USF, and that "the Commission shall ensure that
15 contributions to the State USF . . . are maintained at appropriate levels." The
16 General Assembly went on to state: "Nothing in this section affects the
17 Commission's jurisdiction over distributions from the USF pursuant to Section 58-
18 9-280(E)." Thus, the General Assembly has expressly left it up to the
19 Commission to determine issues like the one being raised here.

1 **II. UNIVERSAL SERVICE**

2 **Q. WHAT IS “UNIVERSAL SERVICE”?**

3 **A.** Very simply put, universal service is the concept that everyone, regardless of
4 where they live, should have access to basic local telephone service at
5 affordable rates, and that rates and services should be comparable in rural and
6 urban areas. Thus, there are two parts to universal service. First, the network
7 must be built out, even to high-cost areas. Second, even where costs are high,
8 subscribers should not be charged rates higher than those charged to
9 subscribers in urban or lower-cost areas. South Carolina law defines universal
10 service as “the providing of basic local exchange telephone service, at affordable
11 rates, upon reasonable request, to all residential and single-line business
12 customers within a defined service area.” S.C. Code Ann. § 58-9-10(16). Basic
13 local exchange telephone service includes “access to basic voice grade service
14 with touchtone, access to available emergency services and directory assistance,
15 the capability to access interconnecting carriers, relay services, access to
16 operator services, and one annual local directory listing (white pages or
17 equivalent).” S.C. Code Ann. § 58-9-10(9).

18 **Q. HAVE WE ACHIEVED UNIVERSAL SERVICE?**

19 **A.** Universal service as it is currently defined – the availability of basic local
20 telephone service at affordable rates that are comparable in rural and urban
21 areas – exists today. However, it is important to understand that universal
22 service is not something you achieve and forget. The capital cost associated
23 with deploying a network is typically recovered over a long period of time. In

1 addition, there are higher ongoing operating costs in remote rural areas, and the
2 network must be continually upgraded. Thus, if funding were eliminated,
3 universal service would soon fail.

4 **Q. WHY IS UNIVERSAL SERVICE IMPORTANT?**

5 **A.** The telephone network is a two-way network. It is unlike most other public
6 utilities in that one phone does no one any good. You might fully enjoy electricity
7 at your home, even if none of your neighbors have it. The same could be said for
8 water or cable TV. But, if you had the best phone service in the world, and no
9 one else had phones, it would be worthless. In fact, the more people connected
10 to a two-way network, the more valuable the network. In recognition that
11 universal service serves the public good, both Congress and the South Carolina
12 General Assembly have codified policies to preserve and advance universal
13 service. Section 254 of the Federal Telecommunications Act of 1996 sets forth
14 universal service principles, the first of which is that quality services should be
15 available at just, reasonable, and affordable rates. Another basic principle is that
16 customers in rural and high-cost areas should have access to
17 telecommunications and information services, including advanced services, that
18 are reasonably comparable to those available in urban areas, and at rates that
19 are reasonably comparable to rates charged in urban areas. Section 254 also
20 provides that there should be specific, predictable and sufficient Federal and
21 State mechanisms to preserve and advance universal service, and that all
22 providers of telecommunications services should make an equitable and

1 nondiscriminatory contribution to the preservation and advancement of universal
2 service.

3 In addition, Section 58-9-280(E) of the 1996 South Carolina Telecommunications
4 Act provides in part: "In continuing South Carolina's commitment to universally
5 available basic local exchange telephone service at affordable rates and to assist
6 with the alignment of prices and/or cost recovery with costs, and consistent with
7 applicable federal policies, the commission shall establish a universal service
8 fund (USF) for distribution to a carrier(s) of last resort."

9 **Q. HOW HAS UNIVERSAL SERVICE BEEN MAINTAINED?**

10 **A.** Prior to 1996, universal service was maintained through the granting of exclusive
11 franchise areas coupled with an obligation to serve the entire area; low-cost
12 federal loan programs; and pooling of toll revenues, which later led to the
13 adoption of the access charge system that is still in place today. Without getting
14 into the complex history of universal service funding, however, suffice it to say
15 that universal service today is funded primarily through the federal high-cost
16 universal service fund and the State USF, consistent with the state and federal
17 law cited above. These funds were created so that implicit support (i.e., support
18 for basic local service that is built into other rates such as access rates) could be
19 removed from the rates for other services and moved into explicit, sufficient and
20 predictable funding mechanisms to ensure the preservation and advancement of
21 universal service.

**Q. WHY IS IT NECESSARY TO HAVE BOTH A FEDERAL HIGH COST
UNIVERSAL SERVICE FUND AND A STATE USF?**

A. The federal universal service fund is tied to costs that have been classified as interstate. Only 25% of the local loop cost (the cost of facility from the central office switch to the customer's home) is classified as interstate. The balance, or 75% of the cost, is classified as intrastate. In the absence of explicit funding the primary way of recovering intrastate cost is through either basic local service rates or intrastate access rates (the wholesale charge for toll calls made within the state). Likewise, the primary way of recovering interstate cost is through long distance rates or interstate access. The federal high-cost fund was created in part to remove implicit support from interstate access rates and replace it with explicit federal universal service support. Even as early as 1996, the result was that toll calls across the nation were cheaper than toll calls within a state. This was completely illogical, as a call between two neighboring towns was often much more expensive than a call all the way across the country. The South Carolina legislature and the South Carolina Public Service Commission recognized the potential negative consequences this imbalance would have on the state economy as a whole. This foresight led South Carolina to become one of the first states to create a state universal service fund to lower intrastate access rates and keep the rates for intrastate toll calls closer to interstate rates.

1 **III. CARRIERS OF LAST RESORT**

2 **Q. WHAT IS A CARRIER OF LAST RESORT OR “COLR”?**

3 **A.** State law defines the term “carrier of last resort” or COLR, as a facilities-based
4 local exchange carrier . . . which has the obligation to provide basic local
5 exchange telephone service, upon reasonable request, to all residential and
6 single-line business customers within a defined service area.”

7 **Q. WHO QUALIFIES AS A COLR IN SOUTH CAROLINA?**

8 **A.** Any carrier that undertakes the obligation as defined above can ask the
9 Commission to be designated as a COLR. Currently, only the incumbent local
10 exchange carriers (“ILECs”) have taken on this obligation and have been
11 designated as COLRs. Additionally, effective October 1, 2009, AT&T (formerly
12 BellSouth) has elected a new form of regulation that essentially does away with
13 its COLR obligation in South Carolina, except with respect to certain
14 grandfathered customers. The remaining ILECs, including all SCTC members,
15 retain their COLR obligation.

16 **Q. WHY HAVEN’T OTHER CARRIERS ASKED TO BE DESIGNATED AS**
17 **COLRs?**

18 **A.** Competitive carriers operate under a different business model. When a market is
19 opened up to competition, competitors naturally will focus on those areas where
20 they can make a profit. In the telecommunications world, this means the areas
21 that are more densely populated, where the cost to serve a customer, on
22 average, is lower. There is no incentive for these carriers to serve more sparsely

1 populated areas – those areas that are served by the rural ILECs – because they
2 cannot make a profit there.

3 **Q. CAN YOU GIVE ME AN EXAMPLE OF WHAT YOU ARE TALKING ABOUT?**

4 **A.** Yes. The more households you have in a given area, the lower the average cost
5 to serve an individual customer. For example, if it costs \$10,000 to deploy one
6 mile of cable and you only have one customer on that cable route, the cost is
7 \$10,000 per household. If, however, you pass 200 customers, the average cost
8 per customer drops to \$50 per household. Thus, population density is tied
9 closely to cost. New entrants in the market naturally will seek first to serve those
10 areas where they can get a bigger bang for their buck – in this example, areas
11 where there are more households per mile of cable.

12 **Q. WHAT ROLE DOES A CARRIER OF LAST RESORT (COLR) PLAY IN**
13 **DELIVERING UNIVERSAL SERVICE?**

14 **A.** Historically, the creation of local franchise areas allowed the state commission to
15 hold a specific carrier responsible for building a network throughout the franchise
16 area. In effect, the franchised carrier must serve a requesting customer even if
17 no one else is willing to provide service. Without this carrier of last resort
18 obligation, most high cost areas just would not be served. Thus, it is the COLR
19 who delivers universal service, who builds the network even in high cost areas.
20 In order for high cost areas to continue to be served, the COLR must be able to
21 recover the cost of serving all customers in a given area. It is this concept that is
22 at the heart of universal service funding.

1 **IV. STATE USF SUPPORT**

2 **Q. HOW IS RLEC STATE USF SUPPORT DETERMINED?**

3 **A.** There are a few key points regarding RLEC support. First, it is cost based. This
4 Commission went through extensive hearings to analyze and review our actual
5 embedded cost data. There is a cap on how much support the state can provide
6 to each RLEC. This cap is determined by taking the cost of service as it has
7 been determined and subtracting from this figure local service rates and federal
8 support. The resulting amount represents the implicit subsidy that has been built
9 into other rates such as intrastate access. Next, in order to assure that State
10 USF is revenue neutral in the sense that it is simply replacing implicit support as
11 intended, the Commission requires the RLEC first to reduce the rate of a service
12 that includes this implicit subsidy before receiving State USF. Again, public
13 hearings were held where each company had to demonstrate that the revenue
14 reduction being made was equal to the State USF draw being requested.

15 The vast majority of state USF is tied to reduction of state access rates. As
16 discussed above, this was done in order to bring the rates for intrastate toll calls
17 more in line with interstate rates. The State of South Carolina has been a
18 pioneer in this regard.

19 **Q. CAN YOU EXPLAIN THE RELEVANCE OF THE MAXIMUM RATE THAT CAN**
20 **BE CHARGED FOR BASIC LOCAL SERVICE AS IT RELATES TO THE**
21 **STATE USF?**

22 **A.** Yes. The maximum amount a COLR can charge for basic local service is used
23 only in calculating the theoretical maximum size of the fund, which was

1 accomplished some time back. In very simple terms, the difference between
2 what it costs to provide service and what you can charge the customer is the
3 amount you will need to recover from other sources, including subscriber line
4 charges and federal USF. If you back out these amounts, you are left with a
5 theoretical amount that is needed to cover your costs. This amount is made up
6 through a combination of implicit support in other rates and State USF. The
7 federal Telecommunications Act of 1996 expressed a policy of moving this
8 support out of rates and into explicit funding mechanisms like the State USF.
9 Through the State USF, COLRs must identify and remove implicit support in
10 other rates before they can draw State USF. The Commission has had
11 extensive, exhaustive hearings to review and approve cost filings before
12 approving requests for State USF funding. These are not new dollars for the
13 COLR, but simply represent a shift from implicit support to explicit funding. Thus,
14 the maximum amount that a company can charge for basic local service, while
15 being relevant to the calculation of the theoretical maximum amount a company
16 could request, has no real bearing on actual State USF distributions. Actual
17 distributions represent a dollar-for-dollar (revenue-neutral) replacement of the
18 amount of revenue that is lost when a rate that contains implicit support is
19 reduced.

20 **Q. ARE ANY OF THE COLRs DRAWING THE MAXIMUM AMOUNT FOR WHICH**
21 **THEY ARE ELIGIBLE?**

22 **A.** No. In fact, I don't think there is a single COLR drawing anywhere near the
23 maximum for which it is eligible. The high cost portion of the fund (i.e., not

1 including support for low-income customers and administrative expense) is
2 currently around \$51 million, which is about 15% of the maximum size that was
3 established for the fund. Again, carriers can draw additional amounts only after
4 filing cost studies demonstrating that implicit support exists in particular rates,
5 going through a hearing on those cost studies, and reducing the rates in question
6 by a corresponding amount.

7
8 **V. BUNDLES**

9 **Q. WHAT ABOUT THE BUNDLING STATUTE, S.C. CODE ANN. § 58-9-285?**
10 **DOES IT DEREGULATE LINES WITH BUNDLED AND CONTRACT**
11 **OFFERINGS?**

12 **A.** No, it does not appear to deregulate any “lines.” It provides that the Commission
13 must not place restrictions on bundled service or contract offerings. The statute
14 requires carriers subject to the statute (i.e., those that are under some form of
15 alternative regulation) to continue to maintain stand-alone flat-rate tariffs for basic
16 local exchange telephone service for residential and single-line business
17 customers. Furthermore, the General Assembly expressly stated that qualifying
18 carriers that provide bundled offerings or contract offerings are still obligated to
19 provide contributions to the State USF, and that nothing in the statute is intended
20 to affect the Commission’s jurisdiction with respect to distributions from the State
21 USF. See S.C. Ann. § 58-9-285(C).

1 **Q. HOW DOES SOUTH CAROLINA LAW DEFINE BUNDLED OFFERING AND**
2 **CONTRACT OFFERING, AND WHAT RESTRICTIONS APPLY?**

3 **A.** “Bundled offering” and “contract offering” appear to have very specific meanings
4 under South Carolina law. A copy of S.C. Code Ann. § 58-9-285 is attached as
5 Exhibit B to my testimony. In addition, the definitions apply only to carriers who
6 are operating under specific forms of alternative regulation, as defined in the
7 statute. Assuming the carrier fits that definition, and the specific offering meets
8 the definition of a bundled offering or contract offering, the statute provides that
9 the Commission must not impose any requirements related to the terms,
10 conditions, rates, or availability of any bundled offering or contract offering, or
11 otherwise regulate any bundled offering or contract offering of any qualifying LEC
12 or qualifying IXC.

13 **Q. IN A MORE GENERIC SENSE, WHAT DO PEOPLE USUALLY MEAN WHEN**
14 **THEY TALK ABOUT BUNDLES?**

15 **A.** Bundling generally refers to the situation where two or more products or services
16 are sold as a single package. The price of the bundled package is usually
17 discounted from the price that would apply if the customer were to subscribe to
18 each of the services individually. The customer would generally receive a single
19 bill for all of the services provided in the bundle. There are various selling
20 strategies for bundling in competitive telecommunications markets. Again, for
21 marketing purposes, bundling may also involve both telecommunications and
22 non-telecommunications services, such as high-speed internet, cable/video,
23 home security, etc.

1 **Q. IS IT POSSIBLE THAT A CUSTOMER COULD PAY MORE FOR BASIC**
2 **LOCAL SERVICE WHEN IT IS INCLUDED IN A BUNDLE?**

3 **A.** No. By definition, customers buy bundles to save money. They expect discounts
4 off stand-alone prices. If an individual service could be purchased at a lower
5 price on a stand-alone basis, customers would simply buy the stand-alone
6 services individually, or not include a particular service in their bundle. Bundles
7 offer customers a convenient package of services at prices lower than they would
8 pay for individual stand-alone services.

9 **Q. DO THE CABLE COMPANIES THAT OPERATE IN SOUTH CAROLINA**
10 **PROVIDE BUNDLED SERVICES?**

11 **A.** Yes. In fact, it is a key marketing strategy for them. In the recent Time Warner
12 certification proceedings before the Commission (Docket Nos. 2008-325-C
13 through 2008-329-C), Time Warner witness Charlene Keys testified: "Our
14 marketing primarily focuses on bundles of video, high-speed data, and voice
15 services offered in differentiated but easy to understand packages." [See p. 6 of
16 Keys pre-filed testimony in Docket Nos. 2008-325-C through 2008-329-C]. She
17 testified that the number of Time Warner Cable customers with 3 primary
18 services (video, high-speed data, and voice) grew from 760,000 in 2005 to
19 2,363,000 in 2007. [See pp. 5-6 of Keys pre-filed testimony.] Time Warner is
20 marketing its services using direct mail and email campaigns to its current
21 customers, as well as through advertising using local television commercials,
22 newspaper advertising, and radio commercials. [See p. 6 of Keys pre-filed
23 testimony.] According to Time Warner's witness before the Commission earlier

1 this year, Time Warner is not only offering bundled services, but doing so quite
2 successfully.

3 **Q. DOES TIME WARNER HAVE ADVANTAGES IN MARKETING ITS SERVICES**
4 **IN SOUTH CAROLINA AND ELSEWHERE?**

5 **A.** Yes. Perhaps the most significant advantage is that they can choose the specific
6 areas they want to serve. Additionally, Time Warner's sheer size gives it the
7 economies of scale, technology, pricing structures, access to discounted
8 programming, and market dominance to be a major player in any market in which
9 they provide service with respect to all of the services they provide. Time Warner
10 states that it passes 23 million homes and provides video, Internet and telephone
11 service to more than **two million** customers in more than 400 cities and towns in
12 145 counties across North and South Carolina. Time Warner Cable is the
13 second-largest cable operator in the United States, serving more than 14 million
14 customers who subscribe to one or more of its video, high-speed data and voice
15 services.

16 **Q. ARE THE RLECS CONCERNED ABOUT TIME WARNER'S PROVISION OF**
17 **BUNDLED SERVICES IN THE RLEC AREAS?**

18 **A.** Yes. The RLECs are concerned about the effect the provision of bundles in
19 limited portions of our study areas has on the entire study area. This concern,
20 which has been referred to as "cherry picking," has been discussed numerous
21 times over the past fifteen years. Unlike competitors, the RLECs have been
22 designated COLRs in South Carolina. We take this designation very seriously
23 and it is our desire to serve every customer that requests service from us

1 whether that customer is in a more dense area like a town, or located in the
2 middle of a sparsely-populated area such as a natural forest. Cable providers
3 traditionally have provided cable television service only in the more densely-
4 populated areas and are more recently providing other services, including voice
5 service, in those same limited areas where they have a cable footprint. Cable
6 providers are conducting extensive marketing campaigns in the dense areas we
7 both serve, and their market power can have devastating effects on the
8 continued availability of universally affordable basic local service throughout the
9 rural areas we serve. That is why it is essential for RLECs to continue to have
10 access to sufficient State USF funding to meet their commitment to provide
11 affordable basic connectivity to consumers in high-cost rural service areas, while
12 at the same time having the ability to market their services in a manner that
13 allows them to effectively compete with cable companies and others and to
14 provide service offerings like bundles and contracts that their customers –
15 whether in town or out in the country – desire and demand.

16 **Q. WHY SHOULD COLRs CONTINUE TO RECEIVE USF WHEN THEY BUNDLE**
17 **BASIC LOCAL EXCHANGE TELEPHONE SERVICE WITH OTHER SERVICES**
18 **OR PROVIDE THEM PURSUANT TO A CONTRACT?**

19 **A.** The answer is really quite simple – Because they are COLRs, regardless of
20 whether the service is provided on a stand-alone basis, in a bundle, or by
21 contract. In fact, they are COLRs even if they do not provide service to that
22 customer at all, because they have an obligation to maintain the network and to
23 serve that customer if the customer decides to change providers and return to

1 the COLR. State USF was created “for distribution to a carrier(s) of last resort.”
2 S.C. Code Ann. § 58-9-280(E). We should not confuse the concept of COLR
3 cost recovery with the concept of bundling, which is essentially a marketing tool.
4 From a cost recovery standpoint, a COLR has undertaken an obligation – in
5 furtherance of the policy that it is in the greater public interest for all citizens to
6 have access to affordable basic local exchange telephone service – to provide
7 service to all customers within a given service area upon reasonable request.
8 The COLR must be able to recover its cost of providing such service, including
9 the cost of serving high-cost rural locations as well as the cost of standing ready
10 to provide such service even if the customer chooses another service provider. If
11 the COLR cannot recover these costs, it will ultimately go out of business,
12 leaving the rural customers that competitors do not serve without a service
13 alternative. This is the policy behind State USF funding. Bundling, on the other
14 hand, is a marketing tool. Providing services in a bundle or in a contract (for
15 example, with a term discount) is a convenience to the customer, offering the
16 customer additional options in a telecommunications environment that is
17 becoming more complex and more competitive. COLRs receive State USF to
18 recover the higher costs of making basic local exchange telephone service
19 available to all customers in their designated service areas. How the COLR
20 chooses to package or market those services does not change that.

1 **Q. DOES THE STATE USF CURRENTLY PROVIDE FUNDING FOR COLRs WHO**
2 **PROVIDE BASIC LOCAL EXCHANGE TELEPHONE SERVICE,**
3 **REGARDLESS OF WHETHER THE SERVICE IS PROVIDED ALONE OR IN**
4 **COMBINATION WITH OTHER SERVICES?**

5 **A.** Yes, it does.

6 **Q. WHAT HAS CHANGED?**

7 **A.** Nothing has changed. From the inception of the State USF, customers have
8 always subscribed to additional services over and above basic local exchange
9 telephone service, whether it be vertical features like caller ID or call waiting, or
10 other services like long distance calling plans, DSL/high speed internet, video, or
11 wireless services. While bundled services and contract services are becoming
12 more and more prevalent in the market, the concept of providing universal
13 service support to COLRs for the underlying basic local exchange telephone
14 service remains the same. The Commission held numerous proceedings with
15 dozens of witnesses over the course of several years to set up the State USF as
16 it is currently administered. As the South Carolina Supreme Court found, the
17 Commission's orders were "meticulous in their factual determinations and
18 decisions regarding the appropriate methods for implementing the State USF,"
19 and the Commission's actions in examining and approving cost methodologies
20 were "especially illustrative of the Commission's decision-making process." In
21 particular, the Supreme Court stated that the Commission acted appropriately in
22 allocating joint, common and direct costs of the network to the various services
23 that use the network.

1 **Q. CAN YOU ELABORATE ON HOW YOUR SERVICE AREA DIFFERS FROM**
2 **THOSE OF THE CABLE COMPANIES AND CLECS WHO ARE INVOLVED IN**
3 **THIS PROCEEDING?**

4 **A.** Yes. The main differences are (1) the areas we each serve; and (2) the ability to
5 decide where we serve. In our case, the individual members of the SCTC are
6 incumbent local exchange companies. Each has a designated service area or
7 franchise area, determined by this Commission. We are required to serve as the
8 COLR to all customers residing within our respective service areas. Cable
9 companies, on the other hand, are now free to seek statewide franchise authority
10 for the provision of cable television service, but are not required to serve anyone,
11 either with cable television or any other service. In fact, Section 58-12-350 of the
12 South Carolina code specifically provides:

13 No franchising authority, state agency, or political subdivision of
14 the State may impose any cable system or video service network
15 construction or cable or video service deployment build out
16 requirements on a holder of a state issued certificate of franchise
17 authority.
18

19 As an example of how this works, Time Warner Cable, a major cable company
20 that serves within Home Telephone's franchise area, has chosen to serve only in
21 very specific locations. On average, Home Telephone's service area has 21.9
22 households per square mile based on 2000 U.S. Census figures (the most recent
23 available). Yet the portion of Home Telephone's area that Time Warner Cable
24 serves has approximately 170 households per square mile. While that in itself is
25 a staggering difference, it is only part of the story. If you were to disregard the
26 most populous 5% of Home Telephone's service area, the remaining 95% of

1 Home Telephone's service area drops to 10.5 households per square mile.
2 Further highlighting the differences between the two service areas, almost half
3 (46%) of Home Telephone's customers live in that portion of Home Telephone's
4 service area that has an average population density of 10.5 households per
5 square mile. Our company is not alone in this regard. Almost all small rural
6 telephone companies have pockets of higher population density. It is almost
7 always these areas that attract competition.

8 The CLEC business model is even more targeted. Almost all CLECs concentrate
9 their services on business customers, and many CLEC business models do not
10 include any residential service. So not only do they very selectively choose
11 where they provide service, they typically will only serve the largest customers,
12 even in the limited areas in which they serve.

13
14 **VI. PUBLIC INTEREST**

15 **Q. DOES STATE USF CREATE A COMPETITIVE ADVANTAGE FOR RLECS?**

16 **A.** No. As I described earlier, what State USF does is attempt to remove implicit
17 subsidy from competitive services. What this means is that the RLEC does not
18 have to keep the rates for its access services artificially high in order to help pay
19 for the basic telephone network. If an RLEC is forced to charge higher rates for
20 competitive services simply to help pay for the network, it creates a competitive
21 disadvantage for the RLEC and deprives customers of the benefits of true
22 competition. Thus, rather than creating a competitive advantage for RLECs, USF

1 actually helps eliminate a competitive disadvantage and thereby benefits
2 consumers throughout the state.

3 **Q. ARE THERE COMPETITIVE ADVANTAGES CABLE COMPANIES BRING TO**
4 **THE TABLE?**

5 **A.** Yes. There are several. First, there is the size of several of the cable
6 companies. Time Warner and Comcast are among the largest cable companies
7 in the nation. They are hundreds of times the size of even the largest RLEC.
8 Add to that the fact that they can choose to serve only low cost areas and you
9 create an almost insurmountable advantage. But, even beyond all this, there is
10 an advantage in the way the large cable companies are vertically integrated.
11 They own, directly or indirectly, many large programmers, and they have the
12 ability to use their programming ownership to effectively discriminate against
13 smaller video providers. Small cable providers are paying higher rates for
14 retransmission consent fees than larger providers because of their
15 disadvantaged bargaining position. It is impossible to know the extent of this
16 price discrimination because the larger cable companies and the
17 program/content providers use nondisclosure agreements to keep the terms
18 confidential.

1 **Q. GIVEN ALL YOU HAVE DISCUSSED, IN YOUR OPINION WHAT ARE THE**
2 **REAL CONCERNS OF THE CABLE COMPANIES AND CLECS IN THIS**
3 **PROCEEDING?**

4 **A.** The cable companies and CLECs are trying to gain a competitive advantage by
5 forcing the RLECs to either give up State USF or discontinue offering bundled
6 services.

7 **Q. WOULD ELIMINATING STATE USF FOR BUNDLED SERVICE LINES BE IN**
8 **THE PUBLIC INTEREST?**

9 **A.** No, it would not. Ultimately, the real loser would be the subscriber. If we could
10 not offer bundles, then customers residing in areas where the cable companies
11 do not serve would be unable to realize the savings bundles create. Additionally,
12 if we could not offer bundles in those areas where the cable companies do
13 provide service, customers would not have a competitive choice of bundles, or
14 the resulting cost savings. Finally, with a potential competitor for bundled
15 services removed, the cable companies and CLECs would be able to increase
16 the price for their bundles, further harming consumers and competition.

17 Different harms would occur if we attempted to continue offering bundles but had
18 to surrender State USF. The RLECs would not be able to remain competitive in
19 those areas where they face competition while, at the same time, continuing to
20 be able to provide affordable basic local service in the high-cost rural areas. This
21 would violate one of the fundamental principles of universal service.

1 **Q. WHY DO YOU BELIEVE THE CABLE COMPANIES IN PARTICULAR ARE**
2 **MOTIVATED BY THEIR OWN INTEREST IN GAINING A COMPETITIVE**
3 **ADVANTAGE?**

4 **A.** It seems that the cable companies in particular will say whatever is needed to
5 achieve the results they desire. For example, during a hearing just this past
6 January before the Commission, Time Warner argued that it should be allowed to
7 enter the RLECs' service areas to provide competitive service, and that doing so
8 would not harm the RLECs, in part because they would have the ability to
9 increase their draw from both state and federal universal service funds. [See
10 Ankum pre-filed testimony in Docket Nos. 2008-325-C through 2008-329-C at pp.
11 21-26.] Less than a year later, we essentially have the same company (now that
12 it has obtained entry into the markets for which it sought certification by the
13 Commission) arguing to restrict the RLECs' eligibility not only for future funding,
14 but for funding they are currently receiving.

15 **Q. WOULD GRANTING THE CABLE COMPANIES' AND CLECS' REQUEST IN**
16 **THIS CASE THREATEN UNIVERSAL SERVICE?**

17 **A.** Yes, in several ways. One of the fundamental principles of universal service is
18 that rural high cost customers should have access to comparable service, at
19 rates similar to those who live in urban areas. As explained above, either
20 outcome, the elimination of USF support or the elimination of bundled offerings
21 by RLECs, would likely result in rural areas either paying more or not having
22 bundled services available. On a broader basis, this case is really about forcing
23 a cable model onto the telephone industry. If all companies were free to provide

1 service where they want, at prices they determine based on market conditions,
2 there would be a level playing field, but there would not be affordable basic
3 service for all citizens, and consumers would suffer.

4 **Q. WHAT WOULD YOU HAVE THE COMMISSION DO IN THIS MATTER?**

5 **A.** I respectfully request that the Commission reaffirm yet again that COLRs
6 continue to be eligible to receive State USF for all basic local exchange service
7 they provide, regardless of whether the basic local exchange service is provided
8 on a stand-alone basis or as part of a bundled service offering or contract
9 offering. This is consistent with the way the State USF and federal USF are
10 currently administered, furthers universal service policy, and is in the public
11 interest. Universal Service is vitally important to the continuation of universally
12 available and affordable local exchange service across the State of South
13 Carolina. While cable companies and CLECs – who are free to provide and price
14 service without constraints – argue that State USF for RLECs should be reduced,
15 it is clear that they are motivated by a desire to gain an advantage in any way
16 they can, without regard for the public interest. The RLECS and ILECs in South
17 Carolina that are COLRs must remain viable so that they can continue to provide
18 basic local exchange service to all requesting customers at affordable rates.
19 Without COLRs and the State USF funding on which they depend, the public
20 policy of universally available and affordable basic service for all citizens, as
21 mandated by the South Carolina General Assembly, could not be met.

EXHIBIT A

South Carolina Telephone Coalition Member Companies

Bluffton Telephone Company, Inc.
Chesnee Telephone Company
Chester Telephone Company, d/b/a TruVista Communications
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company, d/b/a Comporium Communications
Hargray Telephone Company, Inc.
Home Telephone Company, Inc.
Horry Telephone Cooperative, Inc.
Lancaster Telephone Company, d/b/a Comporium Communications
Lockhart Telephone Company, d/b/a TruVista Communications
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
PBT Telecom
Ridgeway Telephone Company, d/b/a TruVista Communications
Rock Hill Telephone Company, d/b/a Comporium Communications
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

EXHIBIT B

SECTION 58-9-285. Regulation of bundled offerings.

(A) As used in this section:

(1) “Bundled offering” means:

(a) for a qualifying LEC, an offering of two or more products or services to customers at a single price provided that:

(i) the bundled offering must be advertised and sold as a bundled offering at rates, terms, or conditions that are different than if the services are purchased separately from the LEC’s tariffed offerings;

(ii) each regulated product or service in the offering is available on a stand-alone basis under a tariff on file with the commission; and

(iii) the qualifying LEC has a tariffed flat-rated local exchange service offering for residential customers and for single-line business customers on file with the commission that provides access to the services and functionalities set forth in Section 58-9-10(9).

(b) for a qualifying IXC, an offering of two or more products or services to customers at a single price provided that:

(i) the bundled offering must be advertised and sold as a bundled offering at rates, terms, or conditions that are different than if the services are purchased separately from the IXC’s tariffed offerings; and

(ii) each regulated product or service in the offering is available on a stand-alone basis under a tariff on file with the commission.

(2) “Contract offering” means any contractual agreement, memorialized in writing, by which a qualifying LEC or a qualifying IXC offers any tariffed product or service to any customer at rates, terms, or conditions that differ from those set forth in the qualifying LECs or qualifying IXCs tariffs.

(3) “Qualifying IXC” means any interexchange carrier operating under alternative means of regulation authorized by the commission.

(4) “Qualifying LEC” means any LEC operating under an alternative means of regulation pursuant to Section 58-9-575; any LEC that has elected to have rates, terms, and conditions for its services determined pursuant to the plan described in Section 58-9-576(B); and any LEC that has elected to have rates, terms, and conditions determined pursuant to alternative means of regulation under Section 58-9-577.

(B) The commission must not:

(1) impose any requirements related to the terms, conditions, rates, or availability of any bundled offering or contract offering of any qualifying LEC or qualifying IXC that a customer accepts after the effective date of this act; or

(2) otherwise regulate any bundled offering or contract offering of any qualifying LEC or qualifying IXC that a customer accepts after the effective date of this act. Without limiting the foregoing, upon the filing of a complaint by an end use purchaser of a bundled offering or a contract offering, the commission may enforce the terms and conditions of a bundled offering or a contract offering under the same principles that apply when a court of general jurisdiction enforces the terms and conditions of an unregulated contract between two parties. No person or entity other than the end user purchaser that filed the complaint and the qualifying LEC or qualifying IXC that provides the bundled offering or contract offering that is the subject of such complaint shall be a party to any such complaint proceeding before the commission.

(C) A qualifying LEC or qualifying IXC providing bundled offerings or contract offerings is obligated to provide contributions to the Universal Service Fund (USF), and the commission shall ensure that contributions to the state USF, pursuant to Section 58-9-280(E), are maintained at appropriate levels. Nothing in this section affects the commission's jurisdiction over distributions from the USF pursuant to Section 58-9-280(E).

(D) Access minutes of use must continue to be classified and reported for purposes of administering the Interim LEC Fund, pursuant to Section 58-9-280(M), in the same manner as they were classified and reported before the effective date of this subsection.

(E) Nothing in this section affects any jurisdiction conferred upon the commission by 47 U.S.C. Section 254(k).

(F) Nothing in this section affects the commission's jurisdiction over complaints alleging that a change in a subscriber's selection of a provider of telecommunications service was made without appropriate authorization or that services that the customer did not order appear on the customer's bill.

(G) The State Regulation of Public Utilities Review Committee may request the Office of Regulatory Staff to compile information to enable the review committee to monitor the effect of bundled offerings and contract offerings on the provision of telecommunications services in South Carolina.